IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 37467 of 2007(I)

PETITIONER:

PUTHIVEDATHUKANDY ABOOBACKER,
S/O.VALANPARAMBATH MUHAMMED HAJI,
AGED 52 YEARS, TIMBER MERCHNAT,
AVIDANALLUR AMSOM,DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.SANTHARAM.P

RESPONDENT:

PERINGOLAN USMAN, S/O.AHAMMED,
AGED 48 YEARS, TIMBER MERCHANT,PANAMARAM
VILLAGE, MANANTHAVADY TALUK,WYNAD DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 37467 OF 2007

Dated this the 18th day of December, 2007

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Koyilandy in O.S. 86/05 whereby the court below held that the agreement relied upon is a bond and therefore stamp duty and penalty is to be paid. Learned counsel for the writ petitioner contends that the said decision is incorrect and therefore it requires interference. I had gone through the documents, which is marked as Ext.P1 in this writ petition. By virtue of this agreement, liability is created on non-fulfillment of the terms of the agreement or in other words the liability is created by virtue of this document alone and it does not relate to a pre-existing liability. The court below had relied upon the decision of this court reported in **Krishnan Kutty v. Jayakrishnan** [2005 (2) KLT 26 SN 32] wherein this court held that "where the obligation is a pre-existing one, the subsequent document giving the nature of the obligation or the terms and conditions of the contract shall be a mere agreement." In other words, the difference between a bond and an agreement is that one deals with the existing

liability and the other with a pre-existing liability. This court again considered the matter in the light of the decision reported in **Radha v. Sankaranarayanan** [2007 (1) KLT 20]. The learned Judge have exhaustively dealt with all the decisions and arrived at a finding. “A document whereunder the executant undertakes to repay the amount borrowed earlier within the period provided is an agreement and not a bond.” Reference is also made to the decision of the Apex court in **State of Kerala v. Mc Dowell & Co. Ltd.** [1994 (1) KLT 802]. The Apex court answered the point as follows:

> “The only question to pose is, has the executant of the instrument put himself under an obligation, or bound himself, to pay a sum of money to another, the obligation to be void under specified circumstances? If the executant can be sued for that sum of money only upon the strength of the instrument, the instrument is a bond.”

2. So, a survey of these decisions would reveal that in order to become a bond, it must be something connected with the liability in pursuance of the terms of the agreement entered into between the parties at that point of time. But if it only refers to a pre-existing liability, then the character changes and it become an agreement. So far as the present case is concerned, the liability is created and the entitlement to sue arises out of the terms of agreement.

3. In the light of the principles laid down in these three cases, I cannot find fault with the learned Sub Judge in arriving at a conclusion that the document is a bond and not an agreement. Therefore, the order does not call for any interference.

Therefore, the writ petition is dismissed.

M.N.KRISHNAN, JUDGE

vps